IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.No.572 of 1997

1.The District Collector,
South Arcot District at Cuddalore.

2.The Divisional Excise Officer,
Thirukoilur, in the place of
Taluk Excise Officer, Thirukoilur,
Ulunthurpettai.

3.The Village Administrative Officer,
Senthanadu.

.. Appellants/Respondents/Defendants

vs.

Ramalinga Naidu .. Respondent/Appellant/Plainiff

Prayer: This second appeal has been preferred against the decree and judgment dated 5.4.1995 in A.S.No.28/1993 passed by the learned Subordinate Judge, Villupuram, confirming the decree and judgment dated 03.11.1992, in O.S.No.144/1986 on the file of the District Munsif, Thirukoilur.

For Appellants : Mr.R.Subbhiah, Spl.Govt.Pleader(C.S)
For Respondent : Mr.V.Lakshminarayanan

JUDGMENT

This appeal has been preferred against the decree and judgment in A.S.No.28 of 1993 on the file of the Court of Subordinate Judge, Villupuram. The Defendant in O.S.No.144/1986 of the file of the Court of District Munsif, Thirukoilur, are the appellants herein. The plaintiff has filed the suit for recovery of Rs.4,125/- and also for an order restraining the defendants and their men from proceeding under the Tamil Nadu Revenue Recovery Act in pursuance of the orders of the defendants dated 12.4.1984 and 17.5.1985.

2. The short facts in the plaint relevant for the purpose of deciding this appeal are as follows:-

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2(a) The plaintiff was declared as the successful bidder who bid for Rs.4,250/- per month as rent for the Arrack shop No.34 at Sentanadu Village, Ulundurpet Taluk on 29.06.1983 for the period from 16.07.1983 to 15.07.1984 and he had paid Rs.1,000/- as earnest money and also paid Rs.2,125/- being the half month's rent and also paid Rs.1000/- towards the solvency certificate amount. The auction which was held on 29.6.1983 was not confirmed till 29.11.1983 and the same was confirmed on 29.11.1983 by an order in D.Dis.125683/83 passed by the 1st defendant, which was communicated to the plaintiff on 05.12.1983. Since there was a lapse of five months the persons who are addicted to drink became regular customers of nearby arrack shops of adjecent villages viz. Marudur and Arianatham which were situated only about 2 to 3 kms from the Sentanadu Village.

2(b) The plaintiff felt and feared that he cannot expect the desired flow of customers to his shop which is necessary to sustain his shop. So he intimated the 2nd defendant in writing even some time before the receipt of the confirmation order that he was withdrawing his bid due to the change of material circumstances and that the shop may be reauctioned. The Plaintiff had not received any reply to his above petition.

2(c) The 1st defendant is bound to pass an order of Confirmation or refusal within a week's time from the date of auction and in fact he had passed orders of confirmation to several other shops within the period and there was no valid reason whatsover to withhold the order of confirmation for 5 months. This delay had entirely changed the situation and the plaintiff was driven to run his shop in unfavourable condition which were not expected of by him at the time of his bid. The plaintiff was believing or led to believe that the order of confirmation would be a mere formality and may be passed within a week's time of auction and that the plaintiff would be given the privilege of running this shop for the entire period of the excise year i.e., 16.7.1983 to 15.07.1984. As the shop could not be run profitably and fearing of heavy loss, the plaintiff had not paid 2 ½ month's rental as required by the order of confirmation.

2(d) Again the shop was put to reauction on 31.1.1984 by an order of the 1st defendant in Ref. R1.A.S.34/83-84 dated 19.01.1984 and one Gurunathan son of Kesava Padayachi was declared successful bidder on a monthly rental of Rs.4,280/-. Then the 2nd defendant sent an order dated 2.4.1985 demanding the plaintiff a sum of Rs.7,925/- by estimating the loss to the Government at Rs.11,050/- after deducting the sum of Rs.3,125/- paid by Plaintiff. The plaintiff sent a reply dated 9.5.1985 denying and disputing his liability to the alleged loss and also demanded for the refund of Rs.4,125/- paid by him. But the 2nd defendant had not considered the valid objections of the plaintiff and rejected the same on untenable grounds and ordered to pay the amount within a week by his order in Ka.Na-Ka.No.34/83-84 dated 17.5.1985 and also threatened that the amount would be recovered under the provisions of the Revenue Recovery Act if it was not complied with.

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2(d) The said order is highly arbitrary and not valid. The notional loss to the Government assumed by the defendants is factually incorrect and the plaintiff is not liable to pay the amount. Moreover the act of forfeiting the sum of Rs.4,125/- paid by the plaintiff is also against law and the provisions of Tamil Nadu Toddy and Arrack Shops (Disposal in auction) Rules 1981. The defendant have no authority to determine the amount of loss suo moto and at any rate the amount had not been ascertained after due enquiry giving an opportunity to the plaintiff as regards the quantum and his liability. The defendants cannot clothe themselves with the powers of Revenue Recovery Act, as made by the 1st defendant and so any action of the defendants under the Act to recover the amount from the plaintiff will be null and void.

2(e) The earnest money of Rs.1000/- paid by the plaintiff under Rule 8 can be forfeited only if he had not deposited ½ month's rental before the close of the day's sale and in no other case as per the Rule 15, and this is made even clear in Rule 21(1) also. So the act of forfeiting the earnest money is against the provisions and Rules and it is not valid.

2(f) The assumed loss to the Government, if any had been occasioned not by any act of the plaintiff but due to the long delay in passing confirmation order and also taking a long time in ordering resale of the shop when the plaintiff had not paid the rental amount within a week's time of the confirmation order dated 29.11.1983. The defendants by their own delay and lethargic acts of passing orders had inflated the loss and the plaintiff is not liable for such a delay.

2(g) Even the amount of Rs.31,309/- calculated for the period 06.12.1983 to 15.07.1984 is also incorrect and the actual amount of collection would be only Rs.31,024/94. So also the actual amount to be realised by reauction from the reauction purchaser would be Rs.20,330/- and not Rs.20,259/- as calculated by the defendants. The erroneous calculation in arriving at the amount of loss had prejudiced the plaintiff and the plaintiff is put to pay an increased amount which he is not bound to pay. So also even assuming that the assumed amount of loss claimed by the defendants is correct, still if the whole amount paid by the plaintiff is deducted towards the loss, the amount payable by the plaintiff would be Rs.6,925/- and not 7,925/-. Hence taking action for the recovery of Rs.7,925/- is not valid.

2(h) The forfeiture of the amount of Rs.4,125/- paid by the plaintiff is without jurisdiction and against the provisions of law and principles of natural justice, equity and good conscience as the non-payment of the rental itself was the result of the delayed order of confirmation of sale. Hence, the plaintiff has rightly rescinded his contract even before the confirmation of sale by presenting a petition to the 2nd defendant for which he was not favoured with any reply. Hence, the plaintiff is entitled for a refund of the amount Rs.4,125/- paid by him towards his auction.

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2(i) The 2nd defendant had taken steps against the plaintiff for the recovery of Rs.7,925/- under Revenue Recovery Act and had sent Form No.5 notice dated 19.11.1985 attaching the immovable properties of the plaintiff and also Form NO.7A notice that the properties are put up for sale on 20.01.1986. The plaintiff had sent a notice dated 4.1.1986 under Section 80 of CPC to defendants 1 and 2 questioning the legality of the action and also demanding the refund of Rs.4,125/- paid by him. The defendants 1 and 2 received the notice on 6.1.1986 and 7.1.1986 respectively but they have not so far issued any reply. On 20.01.1986 the 2nd defendant came with his revenue officials to the village and demanded the plaintiff payment. When he refused the 2nd defendant had prepared a distraint order attaching the standing paddy crops in the plaintiff's land and asked the 3rd defendant to harvest the crops as and when they became ready for harvest and to sell the same and deposit the amount towards the alleged arrears of the plaintiff. The plaintiff was not even given a copy of the order with the list of the property distrained and a request for it the 2nd defendant was refused. About 4 or 5 days ago the 3rd defendant had harvested the paddy crops in the lands. They are about 8 bags of paddy. So far the 2nd defendant had not issued a proclamation of sale under Section 22 of the Revenue Recovery Act and if the paddy is sold the plaintiff would be put to irreparable loss and he will be deprived of his food for his living as it is the only source for his sustenance. The 2nd defendant is distraining the standing paddy crops on 20.01.986 itself is also not valid as he had already taken steps in attaching the immovable properties of the plaintiff and the sale itself was posted on 20.01.1986. The simultaneous action by attaching the immovable and also of distraining the standing crops for the recovery of dues is also contrary to the provisions of revenue Recovery Act. Hence, the suit.

3. The 2nd and 3rd defendants have adopted the written statement filed by the 1st defendant as follows:-

3(a) It is true that the plaintiff was the successful bidder for the Arrack Shop No.34 at Senthanadu Village which held on 28.06.1983 and the bid amount was Rs.4,250/-. As per the rules laid down the plaintiff has paid a sum of Rs.1000/- towards the Earnest deposit and paid the half month's rental amount. Therefore it is true that the plaintiff has paid a total amount of Rs.4,125/-. The upset price fixed by thedefendants was Rs.5,200/- and the plaintiff's bid could not be considered and the confirmation order could not be passed.

3(b) The plaintiff has suppressed the facts that under several occasions he had participated in the auctions subsequent to the auction held on 28.06.1983. Since there was no bids for several auctions the original bid of the plaintiff for a sum of Rs.4,250/- was ordered to be confirmed on 29.11.1983 and the plaintiff had also acknowledged. The order of confirmation was delayed for a long time caused heavy loss to the plaintiff is not at all correct. The plaintiff has not come out with truth and he comments as there was delay in passing of confirmation order.

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The circumstances under which the plaintiff could not run the arrackshop successfully are all imaginary and has been putforth for the purpose of delaying in payment or to deceive the Government in depositing the amount.

3(c) The arrack shop was put to reauction finally on 31.01.1984 and one Gurunathan was the highest bidder and it was confirmed on 10.02.1984 for a sum of Rs.4,280/-. Therefore the notional loss to the Government was calculated for the period for 06.12.1983 the date on which the confirmation order was served till 22.02.1984 and accordingly the plaintiff was ordered to pay a sum of Rs.7,925/-. It is false to allege that no opportunity was given to the plaintiff in deciding the quantum of amount. There is no need to conduct an enquiry in deciding the quantum and the amount of loss was calculated as per the rules 21 of the Tamil Nadu Toddy and Arrack shops (Disposal in auction) Rules 1981. As per calculation the plaintiff was bound to pay a sum of Rs.7,925/- after deducting the deposit and half month's kist paid by the plaintiff. The plaintiff has not paid the said sum even after notice dated 02.04.1985 and the plaintiff has not paid the arrears.

3(d) The defendant had no other way to recover the arrears except by enforcing the R.R.Act. The provision of R.R.Act was followed and thereby the plaintiff's lands of an extant of 1.03.5 hec, was attached and the same was brought for sale, on 20.01.1986 after issuing proclamation and publication in District Gazettes. Since there were standing crops it was harvested after issuing destrainct order. The paddy of 7.08 Bags was also placed before the Regulated Market Committee, Ulundurpet and the same was disposed for a sum of Rs.895.40 P. A sum of Rs.850/- was adjusted towards notional loss after deducting the Transport charges from Santhanadu to Uludurpet. Groundnut was also collected from the lands of the plaintiff and the same was also sold for a sum of Rs.350/- and this amount was also adjusted towards the arrears. Therefore there was neither irregularity nor illegality committed on the part of the defendant.

3(e) The suit is an infructuous one since the averments in para 2 B states that this defendant and others to be restrained from bringing the distrained paddy for sale. Since the paddy and Groundnut were already sold the suit becomes infructuous. This defendant has every right to enforce the Revenue Recovery Act for the recovery of arrears from the plaintiff and the plaintiff has no right to restrain this defenant from discharging their official duties and the action of the plaintiff is only to delay the proceedings in taking action against the plaintiff. This defendant also not liable to refund the amount of Rs.4,125/- as prayed. Hence, the suit is liable to be dismissed.

4. On the above pleadings the learned trial Judge has framed 10 issues and one additional issue for trial. The plaintiff has examined himself as P.W.1 and exhibited Ex.A.1 to A.11. D.W.1 was examined on the side of the defendants and Ex.B.1 to B.30 were marked. After going through the oral and documentary evidence available, the trial Court has

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come to the conclusion that the plaintiff is not entitled to the relief asked for and consequently dismissed the suit with costs. Aggrieved by the findings of the learned trial Judge, the plaintiff preferred an appeal in A.S.No.28/1993 before the Subordinate Judge, Villupuram. After due deliberation the first appellate Court has allowed the appeal in part thereby directing the defendants to repay Rs.4,125/- to the plaintiff. With regard to an order of restraining the defendants from proceeding under the Revenue Recovery Act, the finding of the first appellate Court is that the orders dated 12.4.1984 and 17.5.1985 are not valid under law. Aggrieved by the findings of the learned Subordinate Judge/first appellate Court, the defendants have preferred this second appeal.

5. The substantial questions of law involved in this second appeal are as follows:-

"a) Whether the suit itself would not be maintainable in view of Section 56(b) of the Tamil Nadu Prohibition Act?

b) Whether the order of the High Court marked as Ex.B-30 would constitute the constructive res judicata under the suit?

c) Whether the department is entitled to claim the notional loss by virtue of the rules framed under the Disposal and Action Rules for the sale of Arrack shops and whether the same is not challengeable in a Civil Court?

6.The Points:-

6(a) Even though the question whether the suit is maintainable in lieu of Section 56(b) of the Tamil Nadu Prohibition Act was not raised before the trial Court, no doubt the same can be agitated at any point of time before the final disposal of the suit or in an appeal, since the question involved is a question of law. The plaint prayer is for refund of Rs.4,125/- from D1 & D2 and also for an order restraining the defendants and their men from proceeding under the Tamil Nadu Revenue Recovery Act in pursuance of the orders of the defendants dated 12.4.1985 and 17.5.1985.

6(b) Ex.A.6 is the suit notice issued by the plaintiff. At para 7 to Ex.A.6-Notice, the plaintiff has sated that he has paid Rs.2,125/- towards advance amount being half a month's kist and Rs.1000/- towards earnest money deposit and Rs.1000/- towards solvency deposit thus totaling Rs.4,125/-. The said amounts are paid by the plaintiff while bidding at the auction of arrack shop NO.34 of Senthanadu Village and the auction period is from 16.7.1983 to 15.07.1984 (excise year 1983-84). The other prayer is to restrain the orders dated 12.4.1984 and 17.5.1985 of the defendants from proceeding under the Tamil Nadu Revenue Recovery Act. Ex.A.7 (original Ex.B.17) is the order of Tahsildar dated 17.5.1985. A mere reading of the said order will go to show that since the plaintiff has failed to deposit 2 ½ months advance after bidding arrack shop No.34 in Senthanadu Village for the year 1983-84, which resulted in a loss of Rs.7,925/- to the Government. So it was directed under the said order that the said mount (Rs.7,925/-) is to be recovered as per the provisions of Revenue Recovery Act. Ex.A.4 is the order passed by the District Collector dated 12.4.1984. As per Ex.A.4, the District Collector has

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arrived at the net loss to the Government as Rs.8,925/- and further, ordered that the half month's rental deposited by the plaintiff to the tune of Rs.2,125/- is to be deducted towards rental dues and the balance is to be recovered under Revenue Recovery Act.

6(c) The learned Special Government Pleader Mr.R.Subbiah appearing for the appellants, would contend that Ex.A.4 to A.7-orders have been passed only under the Tamil Nadu Prohibition Act and the plaintiff has filed the suit in a way of challenging the orders passed by the Revenue Officials under Ex.A.4 to A.7 is barred to be challenged under a Civil Court as per Section 56(b) of the Tamil Nadu prohibition Act, 1937. Section 56(b) of the Tamil Nadu Prohibition Act runs as follows:-

> "Bar of jurisdiction of Civil Courts:-
>
> No civil Court shall have jurisdiction in respect of any matter which the Commissioner or other officer or the Tamil Nadu State marketing Corporation Limited or other authority empowered by or under this Act has to determine and no injunction shall be granted by any court in respect of any action taken or to be taken by such Commissioner, Officer, Corporation or other authority in pursuance of any power conferred by or under this Act."

In support of this contention the learned Special Government Pleader relied on 2000(2) LW 429 (G.Ramanathan Vs. The State of Tamil Nadu, represented by the Collector of Thanjavur, Collector's Office, Thanjavur Town, Tahnjavur). The short facts in the above said dictum are as follows:-

> "The plaintiff was the successful bidder for the sale of arrack in retail through arrack shop number 4, Thanjavur Taluk for the Excise year 1983-84. The salient features of the lease are, viz., that the monthly rental payable by the plaintiff-lessee to the defendant-lessor shall be Rs.96,000/-, that the plaintiff shall deposit with the lessor three months rental amount and that the lease shall be with reference to the arrack shop No.4 to be situated in Adakara Street, Thanjavur Town and municipal limits. After deposit of the three months rental, at the rate of Rs.96,000/- per mensem in July 1983 with the defendant-lessor, the plaintiff commenced their business at T.S.No.526, Adakara Street, Thanjavur on and from 29.7.1983. For the three days of sales in July 1983 viz., 29th, 30th and 31st, the plaintiff has remitted the proportionate rate to the Government. The business was carried on and maintained through August 1983 and was closed by 31.8.1983. The plaintiff is liable to pay rent for August 1983 and he has not carried on business from 1.9.1983 for which he cannot be made liable to the Government.
>
> It is further averred by the appellant-plaintiff that during the conduct of his business in August 1983, the respondent Department has been totally non-cooperative in facilitating the appellant-plaintiff to thrive in their trade. On the other hand, the respondent-defendant had been encouraging

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and conniving and indirectly indulging in attempts to cripple the business of the appellant. The branch shop was run unauthorisedly by the licensee of arrack shop No.5 within the territorial limits or serving area allotted to the appellant and similar was conduct of the licensee of arrack shop No.6 which resulted in very unhealthy competition and the appellant was not in a position to intent and take delivery of the full quota ear-marked for his shop and therefore his sale in the month of August 1983 resulted in poor sales without the appellant availing of full quota supply earmarked from the Government. The appellant-plaintiff approached the defendant authorities to close down illegal and unauthorised activities by the other licensees, By the middle of September 1983, the appellant-plaintiff was not having any supply even from the beginning of the month and the Government also having stopped supply, the appellant makes successive approaches to the officials of the Excise Department, Revenue Department and also Police Department, but met with no response.

Since the plaintiff has closed the business from 1.9.1983, according to him, he is entitled to the refund of the monthly rentals, treating the contract of lease as rescinded on and from 1.9.1983 after appropriating one month rental towards the dues for August 1983. Hence the plaintiff has filed the suit for refund of Rs.2,06,480/- inclusive of interest for the said amount and also for damages.

The respondent has raised a contention that the suit is barred by Section 56(A) of the Tamil Nadu Prohibition Act, 1937 and that the defendants are no way responsible for the loss incurred to the plaintiff.

The trial Court rejected the claim of the plaintiff. While deciding the case the learned Judge of this Court has observed as follows:-

> It is the bounden statutory duty of the officers of the respondent to act and discharge their duties in consonance with the provisions enacted under the Rules. In regard to the jurisdiction of the Civil Court to grant the said reliefs, Section 56(A) and Section 56(B) of the Tamil Nadu Prohibition Act, 1937 have placed restraints on the powers of the Civil Court to deal with the matters arising under the Act. Both the Sections read together there is an intent specific and expressed excluding the jurisdiction of the Civil Curt or for that matter any court. Section 56(A) begins with the non-obstante clause seeing to override the provisions contained in the Civil Procedure Code, 1908 or any law for the time being in force and thereafter mandates that no permanent or temporary injunction or any interim order restraining any proceedings which is

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being or about to be taken for the recovery of any sum, fee or both levied in consideration of the grant of any exclusive or other privilege under the Act or the rules made thereunder or any fee including vend fee or any duty levied by or under the Act or the Rule made thereunder. The grant of any privilege under Section17 (c) or licence under Section 17(B)."

6(d) On the other hand learned counsel appearing for the respondents respondent would contend that under Section 59 of the Tamil Nadu Revenue Recovery Act, 1864, the suit is maintainable, since under the suit the relief asked for is to restrain the defendants from proceeding under the Revenue Recovery Act. Section 59 of the Tamil Nadu Revenue Recovery Act, 1864 runs as follows:-

"Suits by persons aggrieved by proceedings-Limitation -

Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act except as hereinbefore provided, from applying to the Civil Courts for redress : provided that Civil Courts shall not take cogniznace of any suit instituted by such parties for any such cause of action, unless such suit shall be instituted within six months from the time at which the cause of action arose."

Ex.A.4 (Ex.B.14) order dated 12.04.1984 and Ex.A.7 (Ex.B.17) order dated 17.5.1985 are infact challenged under the suit. As per section 59 of the Tamil Nadu Revenue Recovery Act, even there is any irregularity or illegality in following the provisions contemplated under the Tamil Nadu Revenue Recovery Act, is found then the same can be challenged by way of a suit. In the plaint at para 13 there is an averment that there was no notice issued for proclamation of sale under Section 22 of the Revenue Recovery Act and the other allegation is a copy of the distraint order was not served with the list of property distraint to the plaintiff. But P.W.1 in the cross-examination dated 01.10.1992 has admitted that an attachment order was passed under Ex.B.19 dated 3.7.1985 and Ex.B.20n is the notice dated 9.10.1985 and Ex.B.21 is the service of notice in which he has signed. Ex.B.23 is the Gazette Publication (page 268) for the notice of attachment. So the contention of the learned counsel appearing for the respondent that the provision under the Tamil Nadu Revenue Recovery Act has not been followed falls to the ground.

6(e) The learned counsel appearing for the respondent relying on 1994(1) KLT 627 (Bhavani Amma Vs. State), contended that even an auction under Abkari Shops (Disposal in Auction) Rules, 1974 (Kerala) can be agitated before a Court of law. No doubt a grievance of a person affected under the Abkari Shops (Disposal in Auction) Rules, 1974 (Kerala) can be held to be agitated before a Court of law provided he has exhausted all the remedies available to him before the Board of Revenue. In the said dictum the order passed by the Board of Revenue alone was challenged before the High Court of Kerala. A readying of the Judgement will clearly

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go to show that the appellant has not filed any suit for appeal before a Civil Court against the provisions contemplated under the Abkari Shops (Disposal in Auction) Rules, 1974. The facts of the above said case will not be applicable to the present facts of the case.

6(f) The other dictum relied on by the learned counsel appearing for the respondent is 2000 (10) SCC 265 (State of Kerala and others Vs. V.Narayana Pillai (dead) by Lrs. and others), wherein also the respondents who are the legal representatives of one Narayana Pillai, who was the successful bidder for privilege of vending 12 arrack shops in Kunnathur Range. The auction for the year, commencing 1.4.1981 to 31.3.1982, was conducted by the Assistant Excise Commissioner on 27.3.1981 in accordance with Section 18(A) of the Abkari Act read with the Kerala Abkari Shops (Disposal in Auction) Rules, 1974. The predecessor-in-interest of the respondents on 27.3.1981 itself deposited 30% of the auction money, extent of 20%, amounting to Rs.5,80,200. The auction sale was confirmed by the Board of Revenue. The sale notice was issued on 12.10.1982 for sale of the immovable property of the predecessor-in-interest of the respondents, for recovery of the alleged loss suffered by the appellants on resale of the shops. The respondent at this stage filed a writ petitioner before the High Court challenging the sale notice. It was contended on behalf of the Government that there was no delay in confirming the sale. But the Government has failed to produce any document to show that the confirmation of sale was without any delay. Under such circumstances, the Honourable Apex Court has held that the sale was confirmed without any delay and allowed the appeal of the appellant granting the relief asked for. A reading of the above decision will clearly go to show that only the order of the Board of Revenue was under challenge in the appeal throughout by the appellant. The dictum in 1994(1) KLT 627 (Bhavani Amma Vs. State) was also relied on in the above said dictum. There cannot be two opinion about the findings of the Honourable Apex Court in the above dictum because only the order of the Board of Revenue was challenged before the High Court as well as before the Honourable Apex Court. But that is not the case herein. Here the plaintiff has filed the suit challenging Ex.P.4 as well as Ex.P7 orders of the Revenue Officials passed under the Tamil Nadu Prohibition and Excise Act. As per Section 56(B) of the Tamil Nadu Prohibition Act, Civil Courts are barred from entertaining a suit which arose out of the provision contemplated under the Tamil Nadu Prohibition Act.

6(g) The learned counsel for the respondent relying on AIR 1997 SC 2364 (M.P.Electricity Board, Jabalpur Vs. M/s.Vijaya Timber Co.), contended that a Civil Court has got jurisdiction to try a case of this nature. The short facts of the above said dictum are as follows:-

> "The grievance of the plaintiff/respondent was that in the land belonging to him which has been set apart for industrial use, the appellant Board had taken 33 KV high tension transmission lines over the construction already started in the said land without its consent and as such the erection was unauthorised and liable to he removed. The defence was that

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there was no erection when the high tension transmission lines were taken through the land and the plaintiff/respondent never objected for taking those lines. However, the findings of all the three Courts are to the effect that the transmission lines were laid without the plaintiff's consent after the plaintiff has already constructed portion of its Saw Mill, that the overhead transmission lines are likely to endanger the property of the plaintiff, that there was no sanctioned scheme for the transmission lines and that the plaintiff suffered damages @ Rs.5/- per day.

Wherein it has been observed by the Honourable Apex Court as follows:-

> The High Court has given a finding after referring to Section 12 of the Electricity Act, 1910 as well as the provisions of the Electricity (Supply) Act, 1948, that the provisions of latter Act have no application to the facts of the case as admittedly, the transmission lines were not laid under any approved scheme. The High Court further held that the appellant-Board having laid the transmission lines without taking the consent of the plaintiff, cannot be treated as having acted ina ccordance with the provisions of the Indian Electricity Act to take shelter under those provisions. Therefore, according to the High Court, the remedy of the plaintiff was not to take recourse under the provisions of the Act but to file a civil suit for compensation/damages under the common law. In support of this conclusion, the High Court has relied on a judgment of the Madras High Court in S.M.E.S. Corpn. Vs. Jagannathan (AIR 1960 Madras 374) and also another judgment of this Court in Amalgamated Electricity Co. Vs. N.S.Bathena, (AIR 1964 SC 1598). It is well settled that the exclusion of jurisdiction of civil Court cannot be readily inferred and the normal rule is that civil Courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded.

Even though under Sections 12, 19 and 52 of the Electricity Act, the case was barred, according to the learned counsel for the appellant, it has been held in the said case that the Electricity Act itself will not be applicable and the appellant cannot take shelter under the provisions of the Indian Electricity Act. Only under such circumstances, the Honourable Apex Court has held that the Civil court has got jurisdiction. But that is not the case herein. Here, even according to the plaintiff Ex.A.4 and A.7 orders were passed only under the Prohibition Act. Under Section 56 (B) of the Tamil Nadu Prohibition Act, there is an embargo or bar to the Civil Court to go into the matters arising out of the Prohibition Act. The remedy open to the plaintiff is to approach the Board of Revenue or the appellate Authority against the order passed under Ex.A.4 & Ex.A.7 and then only he can approach this Court by way of Writ petition if he could not get appropriate redressal before the revenue forum.

6(h) The learned Special Government Pleader would contend that

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the appeal is also hit by the principles of constructive res judicata in lieu of the order passed under Ex.B.30. The appellant has filed W.P.No.7663/85 challenging the order passed by D2/first appellant dated 7.5.1985 (correct date 17.5.1985 - Ex.A.7). The said writ petition was dismissed without prejudice to the right of the petitioner if any. Under such circumstances, the remedy of the plaintiff is to exhaust his appeal remedy before the appellate forum or Board of Revenue and not to file a Civil suit since it is specifically barred under Section 56(B) of the Tamil Nadu Prohibition Act. Under such circumstances, this Court is necessarily to interfere with the findings of the learned Subordinate Judge, Villupuram, in A.s.No.28/1993. Points are answered accordingly.

7. In fine, the second appeal is allowed setting aside the decree and Judgment in A.S.No.28/1993 on the file of the Court of Subordinate Judge, Villupuram, consequently the suit filed by the plaintiff in O.S.No.144/1986 on the file of the Court of District Munsif, Thirukoilur, is dismissed. The plaintiff is at liberty to agitate his grievance before the appellate authority as provided under the Tamilnadu Prohibition Act. No costs.

ssv

Sd/-
Asst.Registrar

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Sub Asst.Registrar

To,

1.The Subordinate Judge, Villupuram.

2.The District Munsif, Thirukoilure.

3.The Section Officer, V.R.Section,
High Court, Madras.

+1 cc to Mr.V.Raghavachari, Advocate Sr.No.8675.

+1 cc to The Spl. Government Pleader, Sr.No.8710.

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